

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

DANNY VARNER, #100094

§

VS.

§

CIVIL ACTION NO. 6:13cv681

DR. BROWN, ET AL.

§

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge John D. Love. The Report and Recommendation (“R&R”) of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, concludes that this civil rights action should be dismissed without prejudice for failure to prosecute and failure to obey an order. Specifically, Plaintiff has failed to comply with the requirements in the Order of Severance (docket entry #1) in this case to file an amended complaint and either pay the filing fee or file a motion to proceed *in forma pauperis*. Plaintiff has not filed objections, but has responded to the Report and Recommendation and/or the Order of Severance by filing two documents in particular, which the Court will construe in the same light as formal objections. One is a two-page, handwritten letter addressed to the Clerk that starts with the sentence, “Enclosed please find the Amendment to my complaint.” See docket entry #11. However, there is no “amendment” and no amended complaint attached to his letter or filed separately. Therefore, Plaintiff has failed to comply with the requirement to file an amended complaint set forth in the Order of Severance. The second is a completed form motion to proceed *in forma pauperis*. See

docket entry #12. However, Plaintiff failed to include an *in forma pauperis* data sheet reflecting his inmate trust fund account, which is required for a prisoner *in forma pauperis* request. Again, Plaintiff has failed to comply with the Court's requirements.

The Court has conducted a careful *de novo* review of the pleadings in this case, the Report of the Magistrate Judge, the Plaintiff's constructive objections thereto, and all other documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that Plaintiff's constructive objections are **OVERRULED** and the Report of the Magistrate Judge is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled civil case be and hereby is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute and failure to obey an order. It is finally

ORDERED that any and all other motions that may be pending in this civil action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this 9th day of December, 2013.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE